REMARKS

The Examiner has objected to Claims 1, 9, and 17 due to informalities. Applicant respectfully asserts that such objection has been avoided in view of the clarification made to the aforementioned claims.

The Examiner has rejected Claims 1-8, and 25-27 under 35 U.S.C. 101 as being directed towards non-statutory subject matter. Applicant has clarified Claim 1 to include a computer program product "embodied on a tangible computer readable medium" in order to avoid such rejection.

The Examiner has rejected Claims 1-27 under 35 U.S.C. 102(e) as being anticipated by Caronni et al. (U.S. Patent Publication 2002/0143850 A1). Applicant respectfully disagrees with such rejection, especially in view of the amendments made to each of the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of former dependent Claim 3 et al.

In the spirit of expediting the prosecution of the present application, applicant has amended each of the independent claims to further distinguish applicant's claim language from the above reference, as follows:

> "file read code operable in response to a read request for a computer file identified within said pending scan database to trigger said scanning code to scan said computer file as a high priority task with a first priority that is higher than a second priority of said low priority task, before permitting read access to said computer file" (see this or similar, but not necessarily identical language in each of the independent claims).

With respect to the subject matter of former Claim 3 et al. (as amended - now at least substantially incorporated into each of the independent claims), the Examiner has

relied on the following excerpt from the Caronni reference to make a prior art showing of applicant's claimed "file read code operable in response to a read request for a computer file identified within said pending scan database to trigger said scanning code to scan said computer file as a high priority task with a first priority that is higher than a second priority of said low priority task, before permitting read access to said computer file" (see this or similar, but not necessarily identical language in the independent claims).

> "Once the processing is complete, the device is tasked with other higher priority jobs, or the device elects to stop processing prior to completely processing the packet data, the device updates the progress indicator (see e.g., step 308) to reflect the amount of processing performed. After the progress indicator is updated the device forwards the data comprising the progress indicator to another network node (see e.g., step 309) for processing. That node may or may not perform further processing before forwarding the data again. The reader should note that the step of associating a progress indicator may also be carried out after out after the step of performing data processing."
> (Paragraph [0035] — emphasis added)

Applicant respectfully asserts that Caronni simply discloses "perform[ing] any type of processing that relates to the data received" (Paragraph [0034]), and that "[o]nce the processing is complete, the device is tasked with other higher priority jobs, or the device elects to stop processing prior to completely processing the packet data" (Paragraph [0035]). However, merely tasking a device with higher priority jobs once it completes processing the received data, as in Caronni, fails to teach "file read code operable in response to a read request for a computer file identified within said pending scan database to trigger said scanning code to scan said computer file as a high priority task" (emphasis added), as claimed by applicant. Clearly, processing received data, as in Caronni, simply fails to suggest that "in response to a read request…trigger[ing] said scanning code to scan said computer file as a high priority task" (emphasis added), in the manner as claimed by applicant.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be

shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. This criterion has simply not been met by the above reference, as noted above.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 7 et al , the Examiner has relied on Paragraphs [0029]-[0030] from the Caronni reference to make a prior art showing of applicant's claimed "upon startup detecting any computer files stored on a storage device not included within either said pending scan database or said scanned file database and to add such computer files to said pending scan database" (see this or similar, but not necessarily identical language in each of the aforementioned claims).

Applicant respectfully asserts that the excerpts from Caronni relied upon by the Examiner simply teach that "[t]he system comprises one or more processing nodes that have access to a library of virus signatures" and that "[e]ach node is enabled to access the virus signature library and scan the data for the presence of any of the virus signatures" (Paragraph [0029]). However, merely disclosing that nodes may utilize a virus library to scan for signatures, as in Caronni, fails to even suggest "upon startup detecting any computer files stored on a storage device not included within either said pending scan database or said scanned file database and to add such computer files to said pending scan database" (emphasis added), as claimed by applicant.

Additionally, with respect to Claim 25, the Examiner has relied on Paragraphs [0044]-[0045] from the Caronni reference to make a prior art showing of applicant's claimed technique "wherein an order of said computer files identified within said pending scan database being scanned is based on an algorithm that estimates the likelihood of a read request being performed on each computer file."

Applicant respectfully asserts that the excerpts from Caronni relied upon by the Examiner merely disclose "executing incremental data processing in an embodiment…

that implements progressive processing" (Paragraph [0044]). Further, Caronni discloses that "[i]f the processing node is unable to perform data processing it may suspend processing for a certain amount of time" (Paragraph [0044]). However, merely disclosing the execution of incremental data processing, in addition to disclosing the temporary suspension of processing, as in Caronni, does not even suggest "an order of said computer files identified within said pending scan database," much less a technique "wherein an order of said computer files identified within said pending scan database being scanned is based on an algorithm that estimates the likelihood of a read request being performed on each computer file" (emphasis added), as claimed by applicant.

Furthermore, with respect to Claim 26, the Examiner has relied on Paragraphs [0009] and [0030] from the Caronni reference to make a prior art showing of applicant's claimed technique "wherein only computer files determined to be clean from the malware scanning are stored in the scanned file database."

Applicant respectfully asserts that the excerpts from Caronni relied upon by the Examiner disclose that "[a] progress indicator contains information about whether the data packet has been partially processed" (Paragraph [0009] – emphasis added). Further, Caronni discloses that "the processing node will include, in the progress indicator, information about the amount of data that has been scanned, and an indication about the viruses for which scanning has been performed" (Paragraph [0009]). However, merely teaching that a progress indicator contains information on a data packet, such as an indication about the viruses for which scanning was performed, as in Caronni, simply fails to even suggest a scanned file database, much less a technique "wherein only computer files determined to be clean from the malware scanning are stored in the scanned file database" (emphasis added), as claimed by applicant. Clearly, a progress indicator for a data packet, as in Caronni, simply fails to meet "a scanned file database," in the manner as claimed by applicant.

The aforementioned criterion has simply not been met by the above reference, as noted above. A notice of allowance or specific prior art showing of each of the foregoing

claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 28-31 below, which are added for full consideration:

"wherein if said scanning code determines that said computer file is clean, said data identifying said computer file is removed from said pending scan database" (see Claim 28);

"wherein if said scanning code determines that said computer file is not clean, triggering malware actions" (see Claim 29);

"wherein said malware actions include at least one of file cleaning, file quarantining, file deletion, and alert issuing" (see Claim 30); and

"wherein said second priority of said low priority task is determined based on a predetermined time period" (see Claim 31).

Again, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The

Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P486/01.060.01).

Respectfully submitted,
Zilka-Kotab, PC.

/KEVINZILKA/

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100